

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TODD C. BANK., Individually and on behalf of all :
others similarly situated, :

Plaintiff,

v.

LIFEWATCH, INC., LIFEWATCH SECURITY,
INC., each doing business as LIFEWATCH-USA, :
and SAFE HOME SECURITY, INC. :

Defendants.

Case No. 15-CV-02278-JG-VMS

**LIFEWATCH INC. AND LIFEWATCH
SECURITY INC.'s ANSWER**

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Defendants Lifewatch, Inc. and Lifewatch Security Inc. ("Lifewatch), by and through their undersigned attorneys, respond to the Complaint as follows:

1. Lifewatch denies the allegations against it in Paragraph 1 of Plaintiff's Complaint.
2. Lifewatch denies the allegations against it in Paragraph 2 of Plaintiff's Complaint and respectfully refers legal questions to the court for determination.
3. Lifewatch denies the allegations against it in Paragraph 3 of Plaintiff's Complaint and respectfully refers legal questions to the court for determination.
4. Lifewatch denies the allegations against it in Paragraph 4 of Plaintiff's Complaint and respectfully refers legal questions to the court for determination.
5. Lifewatch denies the allegations against it in Paragraph 5 of Plaintiff's Complaint and respectfully refers legal questions to the court for determination.
6. Lifewatch admits the allegations in Paragraph 6 of Plaintiff's Complaint.

7. Lifewatch denies the allegations against it in Paragraph 7 of Plaintiff's Complaint.
8. Lifewatch admits the allegations in Paragraph 8 of Plaintiff's Complaint.
9. Lifewatch denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of Plaintiff Complaint, and therefore denies these allegations.
10. Lifewatch admits the allegations in Paragraph 10 of Plaintiff's Complaint.
11. Lifewatch admits the allegations in Paragraph 11 of Plaintiff's Complaint.
12. Lifewatch denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 of Plaintiff Complaint, and therefore denies these allegations.
13. Lifewatch denies the allegations against it in Paragraph 13 of Plaintiff's Complaint and respectfully refers legal questions to the court for determination.
14. Lifewatch denies the allegations against it in Paragraph 14 of Plaintiff's Complaint and respectfully refers legal questions to the court for determination.
15. Lifewatch denies the allegations against it in Paragraph 15 of Plaintiff's Complaint and respectfully refers legal questions to the court for determination.
16. Lifewatch denies the allegations against it in Paragraph 16 of Plaintiff's Complaint and respectfully refers legal questions to the court for determination.
17. Lifewatch denies the allegations against it in Paragraph 17 of Plaintiff's Complaint and respectfully refers legal questions to the court for determination.
18. Lifewatch denies the allegations against it in Paragraph 18 of Plaintiff's Complaint and respectfully refers legal questions to the court for determination.
19. Lifewatch denies knowledge or information sufficient to form a belief as to the truth of

- the allegations contained in Paragraph 19 of Plaintiff Complaint, and therefore denies these allegations.
20. Lifewatch denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20 of Plaintiff Complaint, and therefore denies these allegations.
21. Lifewatch denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21 of Plaintiff Complaint, and therefore denies these allegations.
22. Lifewatch denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22 of Plaintiff Complaint, and therefore denies these allegations.
23. Lifewatch denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23 of Plaintiff Complaint, and therefore denies these allegations.
24. Lifewatch denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 24 of Plaintiff Complaint, and therefore denies these allegations.
25. Lifewatch denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25 of Plaintiff Complaint, and therefore denies these allegations.
26. Lifewatch denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26 of Plaintiff Complaint, and therefore denies these allegations.

27. Lifewatch denies the allegations against it in Paragraph 27 of Plaintiff's Complaint.

28. Lifewatch denies the allegations against it in Paragraph 28 of Plaintiff's Complaint.

29. Lifewatch denies the allegations against it in Paragraph 29 of Plaintiff's Complaint.

30. Lifewatch denies the allegations against it in Paragraph 30 of Plaintiff's Complaint.

31. Lifewatch denies the allegations against it in Paragraph 31 of Plaintiff's Complaint.

32. Lifewatch denies the allegations against it in Paragraph 32 of Plaintiff's Complaint.

33. Lifewatch denies the allegations against it in Paragraph 33 of Plaintiff's Complaint.

34. Lifewatch denies the allegations against it in Paragraph 34 of Plaintiff's Complaint.

35. Lifewatch denies the allegations against it in Paragraph 35 of Plaintiff's Complaint.

36. Lifewatch denies the allegations against it in Paragraph 36 of Plaintiff's Complaint.

37. Lifewatch denies the allegations against it in Paragraph 37 of Plaintiff's Complaint.

38. Lifewatch repeats and realleges the responses set forth above as if fully set forth herein.

39. Lifewatch denies the allegations against it in Paragraph 39 of Plaintiff's Complaint.

40. Lifewatch denies the allegations against it in Paragraph 40 of Plaintiff's Complaint.

41. Lifewatch denies the allegations against it in Paragraph 41 of Plaintiff's Complaint.

42. Lifewatch denies the allegations against it in Paragraph 42 of Plaintiff's Complaint.

43. Lifewatch repeats and realleges the responses set forth above as if fully set forth herein.

44. Lifewatch denies the allegations against it in Paragraph 44 of Plaintiff's Complaint.

45. Lifewatch denies the allegations against it in Paragraph 45 of Plaintiff's Complaint.

46. Lifewatch denies the allegations against it in Paragraph 46 of Plaintiff's Complaint.

47. Lifewatch denies the allegations against it in Paragraph 47 of Plaintiff's Complaint.

48. Lifewatch denies the allegations against it in Paragraph 48 of Plaintiff's Complaint.

49. Lifewatch denies the allegations against it in Paragraph 49 of Plaintiff's Complaint.

50. Lifewatch denies the allegations against it in Paragraph 50 of Plaintiff's Complaint.

51. Lifewatch denies the allegations against it in Paragraph 51 of Plaintiff's Complaint.

52. Lifewatch denies the allegations against it in Paragraph 52 of Plaintiff's Complaint.

53. Lifewatch denies the allegations against it in Paragraph 53 of Plaintiff's Complaint.

54. Lifewatch denies the allegations against it in Paragraph 54 of Plaintiff's Complaint.

55. Lifewatch denies the allegations against it in Paragraph 55 of Plaintiff's Complaint.

LIFEWATCH, INC.'S AFFIRMATIVE DEFENSES

Lifewatch, by and through its attorneys, asserts the following affirmative defenses and reserves the right to assert additional affirmative defenses as needed and as the litigation continues:

FIRST AFFIRMATIVE DEFENSE

Plaintiff's complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part by the principles of waiver, estoppel, unclean hands, and/or other equitable doctrines.

THIRD AFFIRMATIVE DEFENSE

The damages claimed by Plaintiff are not available at law to remedy the conduct alleged.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's damages, if any, are the result of Plaintiffs' own actions, omissions, or conduct.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's damages, if any, are the result of third parties over whom Defendant has no control.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part because Plaintiff has or had a business relationship with Defendant and/or provided consent.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part because he failed to mitigate the alleged damages.

EIGHTH AFFIRMATIVE DEFENSE

Lifewatch cannot be held vicariously liable for the allegedly offending telephone calls because Lifewatch did not initiate telemarketing calls and did not exercise sufficient control over the telemarketing methods, acts and/or practices.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part because he gave express consent for the telephone calls at issue in this action.

TENTH AFFIRMATIVE DEFENSE

Defendant specifically denies that it acted with any willfulness, knowledge, or malice toward Plaintiff.

ELEVENTH AFFIRMATIVE DEFENSE

Lifewatch's actions enable it to avail itself of safe harbor provisions of the TCPA.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part because he lacks standing to sue.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part under the doctrine of primary jurisdiction.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part by the doctrine of preemption.

DEMAND FOR TRIAL BY JURY

Lifewatch hereby demands a jury trial of all issues in the Complaint which are triable to jury.

PRAYER FOR RELIEF

WHEREFORE, Defendant prays for an order of adjudication in its favor and against the Plaintiff as follows:

1. Dismissal of the Plaintiff's claims with prejudice and on the merits;
2. Award of Defendant's costs and reasonable attorneys' fees; and
3. Such other and further relief as this adjudicative body deems appropriate.

Dated: September 29, 2015

The Sultzer Law Group, P.C.

By: Joseph Lipari /s/

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Jason Sultzer, Esq.
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